

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

TOBIE MELISSA KIRKLAND)	CIVIL ACTION NO. 2:07cv759-MHT
)	(CR. NO. 2:03-CR-264-MHT-DRB)
)	
v.)	
)	
)	
UNITED STATES OF AMERICA)	

AFFIDAVIT

STATE OF ALABAMA)
)
COUNTY OF MONTGOMERY)

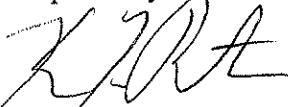
I, KEVIN L. BUTLER, state the following:

1. I am an attorney admitted to practice law in Arizona, the Eastern District of California, the District of Nevada, the Middle District of Alabama, the United States Court of Appeals for the Ninth Circuit, the United States Court of Appeals for the Eleventh Circuit, and the United States Supreme Court. I have been employed as an Assistant Federal Public Defender for over 15 years and in the Middle District of Alabama since November 19, 1998.
2. In order to prepare this affidavit, I have reviewed: (a) the Federal Public Defender's office file in *United States v. Tobie M. Kirkland*, 2:03-CR-264-MHT-DHB; (b) my time records prepared in this matter; (c) the Court docket sheet in *United States v. Tobie M. Kirkland*, 2:03-CR-264-MHT-DHB and (d) Ms. Kirkland's Habeas Petition filed pursuant to 28 U.S.C. § 2255 (Docket #1). Details not provided by my review of the case file and pleadings are based upon my best recollection.

3. Ms. Kirkland asserts that my representation was ineffective because I failed to convince the Alabama state court to run her sentence concurrently with the sentence impose in United States v. Tobie M. Kirkland, 2:03-CR-264-MHT-DHB.
4. Undersigned counsel represented Ms. Kirkland in this Court United States v. Tobie M. Kirkland, 2:03-CR-264-MHT-DHB. On or about July 26, 2006, Ms. Kirkland's probationary sentence was revoked based upon the Court's determination she had broken Alabama state law while on probation. She received a sentence of twenty-four months in the custody of the Federal Bureau of Prisons. Prior to execution of this sentence, she was then returned to Alabama state custody to answer to the state charges for which her federal probation was revoked.
5. Ms. Kirkland was represented on these state charges by Winston D. Durant, Esq., 445 South McDonough Street, Montgomery, Alabama.
6. Prior to being convicted and sentenced in state court, undersigned counsel advised Mr. Durant and the Alabama state judge, Truman Hobbs, of the federal sentence. Mr. Durant then argued unsuccessfully to have Ms. Kirkland's Alabama state sentence run concurrently with her federal sentence.
7. Undersigned counsel simply did not represent Ms. Kirkland in state court and, therefore, my representation during these proceedings could not be ineffective. Additionally, undersigned counsel does not believe this Court has jurisdiction to determine whether Ms. Kirkland's state counsel's representation was ineffective in state court.

Dated this 25th day of February 2007.

Respectfully submitted,



KEVIN L. BUTLER

First Assistant Federal Defender

201 Monroe Street, Suite 407

Montgomery, Alabama 36104

Phone: (334) 834-2099

Fax: (334) 834-0353

E-mail: kevin_butler@fd.org

AZ Bar Code: 014138

Sworn and subscribed to before me this 25th day of February, 2008.



NOTARY PUBLIC

My Commission expires: 11/6/11

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

TOBIE MELISSA KIRKLAND)	CIVIL ACTION NO. 2:07cv759-MHT
)	(CR. NO. 2:03-CR-264-MHT-DRB)
)	
v.)	
)	
)	
UNITED STATES OF AMERICA)	

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Stephen P. Feaga, Esquire
Assistant United States Attorney

Respectfully submitted,

s/ Kevin L. Butler
KEVIN L. BUTLER
First Assistant Federal Defender
201 Monroe Street, Suite 407
Montgomery, Alabama 36104
Phone: (334) 834-2099
Fax: (334) 834-0353
E-mail: kevin_butler@fd.org
AZ Bar Code: 014138